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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/831,843

08/13/2001

Oded Gottesman

1279-277

9783

62836 7590 12/12/2008

BERLINER & ASSOCIATES
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EXAMINER

CHAWAN, VIJAY B

ART UNIT

PAPER NUMBER

2626

MAIL DATE

DELIVERY MODE

12/12/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/831,843	Applicant(s) GOTTESMAN, ODED	
	Examiner Vijay B. Chawan	Art Unit 2626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 12-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 1-10, 12-36 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

3. Claims 1-10 and 12-36 are directed to method for controlling a buffer level which does not fall into one of the enumerated four categories of patent eligible subject matter recited in 35 U.S.C. 101 (process, machine, manufacture, or composition of matter).

Claims 1-10 and 12-36 are not directed toward:

1) a process (nothing is processed/transformed, *i.e.*, the claimed subject matter is directed toward using a computer processor to interpolatively code a input waveform signal), a statutory "process" under 35 USC 101 must (a) be tied to another statutory category (such as a manufacture or a machine), or (b) transform underlying subject matter (such as an article or material) to a different state or thing. Claims 1-10 and 12-26 neither transform underlying subject matter nor positively recite structure associated with another statutory category, and therefore do not define a statutory process.);

2) a machine -there are no claim elements towards an appropriate apparatus, e.g. the elements of a device that would perform the claim steps.

3) a manufacture (no claim elements pertain to an output product);

4) a composition of matter.

Furthermore, the claims are directed to a method for using a *computer processor* to interpolatively code input waveform signals, and as claimed, is a mathematical calculation (algorithm) where the claims do not produce a useful, tangible, and concrete result. If the acts of a claimed process manipulate only numbers, abstract concepts or ideas, or signals representing any of the foregoing, the acts are not being applied to appropriate subject matter (Benson, 409 U.S. at 71-72, 175, USPQ at 676).

Furthermore, claims define nonstatutory processes if they simply manipulate abstract ideas (Warmerdam, 33 F.3d at 1360,31 USPQ2d at 1759). As for guidance to areas of statutory subject matter, see 35 U.S.C. 101 Interim Guidelines (with emphasis of the Clarification of Interim Guidelines For Examination of Patent Applications for Subject Matter Eligibility); as an example, in Alappat, the claimed output smooth waveform (consisted of lighting pixels on an oscilloscope/display) is a useful, concrete, tangible, final result; in Arrhythmia, the claimed useful, concrete, tangible, final result represented the condition of a patient's heart; in State Street, the claimed useful, concrete, tangible, final result was data output that represented a final share price momentarily fixed for recording and reporting purposes and even accepted and relied upon by regulatory authorities and in subsequent trades.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 2626

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 -10, and 12-36 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the method for using a computer processor to interpolatively code input waveform signals. However, steps a-f and h do not show any steps for coding. Step g, uses a coder, but is a statement that states that a plurality of bits are allocation to **the** vector quantization of the dispersion phase of the SEW phase from which the linear shift attribute was reduces or removed, which essentially does not interpolatively code a waveform signal. Similar such errors are present throughout the claim language and need to be addressed and corrected.

7. Claim 1 recites the limitation "the dispersion phase" in step g. There is insufficient antecedent basis for this limitation in the claim.

Response to Arguments

8. Applicant's arguments filed 7/3/08 have been fully considered but they are not persuasive. Applicant's representative agrees that "No language was agreed upon to resolve the 35 USC 101 issues". Upon reviewing claims 1-10, the above stated discrepancies were found.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vijay B. Chawan whose telephone number is (571) 272-7601. The examiner can normally be reached on Monday Through Friday 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil can be reached on (571) 272-7602. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Vijay B. Chawan/
Primary Examiner, Art Unit 2626

vbc
12/13/08